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From: [REDACTED]

Sent: Friday, October 04, 2019 10:33 AM

To: [REDACTED]

Subject: RE: OIC payments

You had asked whether there was a legal or statutory prohibition from issuing a taxpayer a refund where, due to the IRS's mistake, the taxpayer made payments on an OIC that had been rejected. The answer is yes, the Service is prohibited from refunding the taxpayer's payments because there is no overpayment of the taxpayer's liability. In other words, the Service has no legal authority to make a refund in this situation.

The IRS's legal authority to make a credit or refund and the limited circumstances it may exercise that authority, is found in section 6402. Section 6402(a) limits the IRS's legal authority to credit or refund only when an overpayment exists. See also Lewis v. Reynolds, 284 U.S. 281, 283 (1932) (taxpayer not entitled to a refund unless he has over paid his tax); Minihan v. Commissioner, 138 T.C. 1, 8-9 (2012) (before any taxpayer is allowed a refund or credit there must be a determination that an overpayment was made). On overpayment is defined as payments that exceed the amount properly due. Jones v. Liberty Glass Co., 332 U.S. 524, 531 (1947). As it pertains to the potential refund you are asking about in this case, the amount properly due is the amount of the taxpayer's tax liability for the relevant tax period.

We agree that the taxpayer's remittances were payments made towards his tax liability, that the Service properly applied those remittances to his tax liability, and that the IRS's administrative error concerning the OIC does not change the nature of those remittances as payments. We conclude that because there has been no overpayment of the taxpayer's tax liability, the IRS does not have the legal authority to make a refund in this situation pursuant to section 6402(a).

Please let me know if we can be of further assistance.